COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 276 of 2002

Vipin Kumar Gauttam …… **Appellant.**

Versus

K.C.Ramola
and another. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 17-7-2002, passed in M.A.C.T. Case No. 15 of 2000, Vipin Kumar Gauttam Vs. K.C.Ramola and others, by the Motor Accident Claims Tribunal/Addl. District Judge II F.T.C., Hardwar ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 1,07,000/- along with interest @ 9% per annum in favour of the claimant-appellant. Aggrieved, the claimant has come up in appeal with a prayer to enhance the quantum of award and to set aside the impugned judgment and award mainly on the ground that the quantum of award is quite insufficient keeping in view the proved income and employment of the injured-claimant, therefore, the finding of the learned tribunal is perverse and illegal.

Brief facts of the case are that the claimant filed petition under Section 166/140 of the Act before the learned Tribunal on account of injuries sustained by him in a motor accident; occurred on 12.11.1999 at 5-30 p.m. near Petrol Pump Doiwala (Dehradun) with the allegation that on the fateful day, the claimant was coming back to Roorkee from Dehradun on a motor cycle. When he reached

Doiwala near the Petrol Pump, Bus No. U.P. 07J-7032 being driven rashly and negligently by its driver hit the motor cycle on wrong side with the result the claimant sustained grievous injuries. Consequently, the left thigh bone of the claimant got badly fractured and after treatment, two iron rods were inserted in his leg. It is also alleged that the injured incurred about Rs. 50,000/- on his medical treatment and he is required to incur future expenses. The offending bus was owned by the O.P.-respondent no.1 and was duly insured with New India Assurance Co. Ltd. Dehradun. The claimants has claimed compensation under different heads to the tune of Rs. 12,65,000/- as mentioned in the petition.

The O.P.No.1, owner of the bus, filed his written statement and contested the claim petition on the ground that the owner and insurer of the motor cycle were necessary parties to the case, which have not been arrayed as party; that the motor-cyclist was not possessing a valid driving licence and other valid documents in respect of the motor bike; that the accident has not occurred due to rash and negligent driving by the bus driver; that the claimant has received sum of Rs. 34,365/- from the Oriental Insurance Company under the L.I.C. Group Medi-Claim Policy, therefore, the claim petition is not maintainable. O.P. No.2-Insurance Company also resisted the claim petition by filing its written statement on the ground that the Insurance Policy of the insured was to the limited extent; that the accident was the result of rash and negligence on the part of the motor cyclist; that the claim petition is bad for non-joinder of necessary parties; that the driver of the offending bus and the motor cycle both were not having valid driving licence, valid registration, route permit, fitness, etc.; that the Insurance Company reserves its rights to contest the claim petition on the grounds other than as envisaged by Section 149(2) of the Act, under the provisions of Section 170 of the Motor Vehicles Act.

On the pleadings of the parties, the learned Tribunal framed as many as four Issues in the case. The learned Tribunal took

up Issue No.3 first and found that the claimant has already received sum of Rs. 34,365/- under the LIC Medi-claim Policy, therefore, the claimant is not entitled to get compensation towards expenses on medical treatment. On Issue No.2, the Tribunal has come to the conclusion that the driver of the offending bus was holding a valid driving licence on the date of accident. On Issue No.1 the learned Tribunal found that the claimant sustained grievous injuries in the motor accident due to rash and negligent driving by the bus driver, thereby he came permanently disabled to the extent of 40%. On Issue No.4, the learned Tribunal has observed that the pay-certificate of the claimant has not been proved by the authority/officer issuing the same, though paper no. 28-C/15 to that effect has been filed on record. The Tribunal has taken the notional income of Rs. 15,000/- per annum for purposes of determination of compensation on the basis of disability to the tune of 40%. Ultimately, the Tribunal has awarded Rs. 1,07,000/- along with interest @ 9% per annum and it has been observed that the medical expenses worth Rs. 34,365/- has already been reimbursed to the claimant, therefore, this amount cannot be awarded for the second time.

We have heard learned counsel for the claimant-appellant, Mr. Rajendra Singh as well as learned counsel for the respondent No.2-Insurance Company, Mr. T.A.Khan and have carefully examined the entire evidence on record as well as the impugned judgment and award.

In this appeal, the only point argued on behalf of the appellant before us is that the learned Tribunal has fallen into error in ignoring the certificate of salary paper no. ***28-C/15*** showing the income of the claimant as Rs. 5,704-03 per month, issued by the Branch Manager of the Life Insurance Corporation, therefore, it has been submitted that the amount of compensation be enhanced on the basis of the salary certificate in this appeal. It is true that the claimant has produced the aforesaid paper before the Tribunal and has stated his income on oath as P.W.1. We have closely scrutinized

this document. In this certificate, only the total salary of the claimant for three consecutive months has been mentioned by the Officer, who issued the certificate; but the injured-claimant has not produced the Officer concerned to prove the veracity of the document by producing him in the witness box. It is not disputed that certain deductions were required to be made from the salary under the relevant service Rules. We have perused the on oath statement of the claimant Vipin Kumar Gautam, P.W.1. It finds place to mention that this witness too has said not a single word as to what amount he was carrying to his home out of his total salary of Rs. 5704-03 P. Home carrying salary could be the best source for assessing the compensation, had there been a case that the claimant has lost his prospect of job on account of permanent disability. Indisputable the claimant was working as Assistant in the Sales Department of the Life Insurance Corporation. It is proved on record that the claimant is still in his service and has been getting salary from his employer. The grievance of the claimant before the Tribunal was that due to injuries sustained by him in the accident, his promotion has been withheld for three years. But in his cross-examination at page 4, this witness has categorically admitted that he has been getting annual increment against his salary slab and no amount of salary has been withheld by the Department. He has further admitted in his cross-examination that he has already received sum of Rs. 34,365/- towards medi-claim from the Oriental Insurance Company. Therefore, in this case, the claimant has not suffered loss of his income and he has already received handsome reimbursement of expenses towards medical treatment, i.e. Rs. 34,365/-. The claimant as P.W.1 has not even disclosed the details of about Rs. 15,000/- besides the amount of Rs. 34,365/- and not a single word has been said to explain the expenses of Rs. 50,000/- on medical treatment, therefore, we are of the view that the contentions raised on behalf of the appellant are not tenable. The learned Tribunal has rightly awarded compensation worth Rs. 1,07,000/- along with interest @ 9% per annum after considering the entire material on record, so as to arrive at just compensation to the paid to

be appellant. In any view of the matter, we find nothing favourable to the appellant so as to warrant interference with the findings arrived at by the Tribunal.

No other point was urged or argued before us.

In the result, the appeal is devoid of merit and must fail.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP